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Sent: 8/14/2020 9:58:52 PM
To: Molina, Michael [molina.michael@epa.gov]
Subject: Pebble bullets

DELIBERATIVE—DRAFT

Let me know if you need anything else or have questions.

Pebble Mine status update:

- EPA and the Army Corps have distinct roles under Clean Water Act section 404.
 - The Army Corps has authority to issue permits for the discharge of dredged or fill material into WOTUS at specified disposal sites under Clean Water Act (CWA) section 404.
 - EPA has authority to restrict the use of any defined area as a disposal site of dredged or fill material if the discharge will have an unacceptable adverse effect on municipal water supplies, fishery areas, wildlife, or recreational areas.
 - EPA:
 - In 2014, EPA Region 10 issued a “Proposed Determination” under CWA Section 404(c) that, if it had been finalized, would have restricted the use of certain waters and wetlands near Bristol Bay in southwestern Alaska as disposal sites associated with mining the Pebble deposit. **Ex. 5 Deliberative Process (DP)**
- ## Ex. 5 Deliberative Process (DP)
- Pebble subsequently sued EPA over the Proposed Determination. EPA and Pebble settled this litigation in May 2017.
 - In August 2019, EPA officially withdrew the Proposed Determination and published a notice with rationale for the withdrawal.
 - Various environmental and local fishing groups sued EPA over the withdrawal. In April 2020, the U.S. District Court for the District of the Alaska dismissed the case, effectively upholding the withdrawal. Plaintiffs appealed the dismissal to the Ninth Circuit Court of Appeals; the Ninth Circuit heard oral argument in August 2020 and could issue an opinion at any time.
- Corps:
 - In December 2017, Pebble submitted a permit application to the Corps.
 - In February 2019, the Corps released a draft Environmental Impact Statement (EIS) under NEPA and a “CWA Section 404 Public Notice.” EPA submitted public comments to the draft EIS and Section 404 notice in July 2019.
 - In July 2020, the Corps issued its final EIS.
 - The Corps has not yet issued a record of decision on the permit application that would either grant or deny the permit.

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